

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

October 24, 2007

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on October 24, 2007. Lt. Governor Jack Dalrymple, representing Governor John Hoeven, Chairman, called the meeting to order at 1:30 PM, and requested Dale L. Frink, State Engineer, and Chief Engineer-Secretary to the State Water Commission, to call the roll. Lt. Governor Dalrymple announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Lt. Governor Jack Dalrymple, representing John Hoeven, Chairman
Jeff Weispfenning, representing Roger Johnson, Commissioner,
North Dakota Department of Agriculture, Bismarck
Arne Berg, Member from Devils Lake
Maurice Foley, Member from Minot
Larry Hanson, Member from Williston
Elmer Hillesland, Member from Grand Forks
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page

OTHERS PRESENT:

Dale L. Frink, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck
State Water Commission Staff
Approximately 50 people interested in agenda items

The attendance register is on file with the official minutes.

The meeting was recorded to assist in compilation of the minutes.

CONSIDERATION OF AGENDA

Lt. Governor Dalrymple stated that the agenda includes an additional item referenced to as the Northwest Area Water Supply project, contract 2-2A change order.

**CONSIDERATION OF DRAFT MINUTES
OF JULY 17, 2007 STATE WATER
COMMISSION MEETING - APPROVED**

The draft minutes of the July 17, 2007 State Water Commission meeting were approved by the following motion:

It was moved by Commissioner Olin, seconded by Commissioner Berg, and unanimously carried, that the draft minutes of the July 17, 2007 State Water Commission meeting be approved as prepared.

**STATE WATER COMMISSION
BUDGET EXPENDITURES,
2005-2007/2007-2009 BIENNIUMS**

In the 2005-2007 and 2007-2009 bienniums, the State Water Commission has two special line items - administrative and support services, and water and atmospheric resources expenditures. The allocated program expenditures for the period ending June 30, 2007, reflecting 100 percent of the 2005-2007 biennium, and for the period ending September 30, 2007, reflecting 13 percent of the 2007-2009 biennium were presented and discussed by David Laschkewitsch, State Water Commission accounting manager. The expenditures, in total, are within the authorized budgets. **SEE APPENDIX "A"**

In the 2005-2007 and 2007-2009 bienniums, the State Water Commission has two special line items - administrative and support services, and

The Contract Fund spreadsheets for the biennium ending June 30, 2007 and for the 2007-2009 biennium through September 30, 2007, attached hereto as **APPENDIX "B"**, provides information on the committed and uncommitted funds from the Resources Trust Fund, the Water Development Trust Fund, and the potential bond proceeds. The total approved for projects for the 2007-2009 biennium is \$36,929,602, leaving a balance of \$61,093,528 available to commit to projects.

The 1999 legislature passed Senate Bill 2188 which provided up to \$3,500,000 of state funds for the Wahpeton flood control project. Mr. Laschkewitsch referenced the cost share actions by the State Water Commission and indicated that the final cost share reimbursement in the amount of \$1,340,559.50 (June 28, 2006 State Water Commission approval) will be forwarded to the city of Wahpeton in October, 2007.

**RESOURCES TRUST FUND
AND WATER DEVELOPMENT
TRUST FUND REVENUES,
2005-2007 BIENNIUM**

The oil extraction tax deposits into the Resources Trust Fund in the 2005-2007 biennium totaled \$25,822,906 and ended the biennium \$9,387,350, or 57.1 percent ahead of the budgeted revenues.

Deposits into the Water Development Trust Fund totaled \$19,722,653 and ended the 2005-2007 biennium \$952,207, or 4.6 percent behind budgeted revenues.

**RESOURCES TRUST FUND
AND WATER DEVELOPMENT
TRUST FUND REVENUES,
2007-2009 BIENNIUM**

The oil extraction tax deposits into the Resources Trust Fund total \$6,347,488 and are currently \$1,328,336, or 26.5 percent ahead of the budgeted revenues.

There have been no deposits into the Water Development Trust Fund in the 2007-2009 biennium. The first payment is scheduled to be made in April, 2008.

**APPROVAL OF NORTH DAKOTA
NATURAL RESOURCES TRUST
ALLOCATION (\$19,799.34) FOR
FISCAL YEAR 2007
(SWC Project No. 1826)**

In 1986, the Garrison Diversion project was reformulated by Congress. Two new features of the project were the Municipal, Rural and Industrial (MR&I) Water Supply program and the Wetlands Trust. Both features are wide-

spread programs benefiting much of the state. The Dakota Water Resources Act of 2000 changed the name to the North Dakota Natural Resources Trust.

The North Dakota Natural Resources Trust is a program that provides for the preservation, enhancement, restoration, and management of wetlands and associated wildlife habitat in the state. The Natural Resources Trust operates off of the interest from a trust fund that will eventually reach \$13.2 million. Of the \$13.2 million, \$12.0 million is to come from the federal government and \$1.2 million from the State of North Dakota.

In 1993, the Garrison Diversion Conservancy District, the State Water Commission, and the North Dakota Game and Fish Department entered into a memorandum of agreement in which the three entities agreed to share equally the state's commitment in accordance with the terms set out in a February 14, 1991 agreement between the State of North Dakota, the Bureau of Reclamation, and the North Dakota Wetlands Trust. That agreement provides that the state's share shall be based on 0.15 percent of the federal Garrison Diversion Unit (GDU) appropriation. The Fiscal Year 2007 state's commitment is \$59,398.00. The State Water Commission's one-third share is \$19,799.34.

Commissioner Olin disclosed that he currently serves on the North Dakota Natural Resources Trust board of directors, and questioned if a conflict of interest exists relative to this project. Although Lt. Governor Dalrymple ruled that this disclosure would not be considered as a conflict of interest, Commissioner Olin chose to abstain from voting.

It was the recommendation of Secretary Frink that the State Water Commission approve an allocation of \$19,799.34 for one-third of the state's Fiscal Year 2007 North Dakota Natural Resources Trust contribution, contingent upon an equal contribution by the Garrison Diversion Conservancy District and the North Dakota Game and Fish Department.

It was moved by Commissioner Swenson and seconded by Commissioner Thompson that the State Water Commission approve an allocation of \$19,799.34 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), for one-third of the state's Fiscal Year 2007 contribution to the North Dakota Natural Resources Trust. This action is contingent upon the availability of funds, and an equal contribution by the Garrison Diversion Conservancy District and the North Dakota Game and Fish Department.

Commissioners Berg, Foley, Hanson, Jeff Weispenning representing Commissioner Johnson, Hillesland, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. An abstention of vote was recorded for Commissioner Olin. Lt. Governor Dalrymple announced the motion carried.

***SHEYENNE DAM, EDDY COUNTY,
REHABILITATION PROJECT -
WITHDRAWAL OF STATE COST
PARTICIPATION REQUEST
(SWC Project No. 518)***

A request from the Eddy County Water Resource District requesting construction assistance and state cost participation for rehabilitation of the Sheyenne Dam was considered. Sheyenne Dam was built in 1936 for recreational

purposes, but the dam is also valuable to local farmers, ranchers and businesses. The dam is presently in poor condition and several items need repair to prevent further deterioration of the dam.

Proposed modifications to the dam include sealing the existing weir structure with a new concrete cap and repair abutments, and the installation of a rock riprap fish passage downstream of Sheyenne Dam. Estimated project costs are \$95,000. Cost participation proposals include the State Water Commission (33.33 percent of in-kind services); North Dakota Game and Fish Department (28 percent); and the Eddy County Water Resource District (38.67 percent).

Secretary Frink explained that the State Water Commission staff developed the design work for the modifications and will carry out the construction. Because the State Water Commission's majority of its contribution

to the project will be in-kind services, a funding allocation would not be required at this time. The State Water Commission members concurred with Secretary Frink's recommendation to withdraw the cost share participation request.

***INTERNATIONAL WATER INSTITUTE -
APPROVAL OF STATE COST PARTICI-
PATION (\$400,000) FOR RED RIVER
BASIN MAPPING INITIATIVE
(SWC Project No. 322)***

Senate Bill 2020, the State Water Commission's appropriation bill for the 2007-2009 biennium, provides up to \$400,000 to the International Water Institute for their Red River basin mapping initiative (RRBMI). The pur-

pose of the initiative is to collect and publicly disseminate high resolution elevation data for the entire United States portion of the Red River of the North drainage basin. The project is anticipated to last three years with the first data collection effort planned for the spring of 2008. The estimated project cost is \$5.0 million, of which 50 percent of the funding is anticipated from the federal government with the balance to be provided by several local and state entities.

Charles Fritz, director of the International Water Institute, Fargo, ND, presented a request for the State Water Commission's consideration for state cost participation in the amount of \$400,000 for the Red River basin mapping initiative. Mr. Fritz's presentation included technical project information and the federal, state, and local efforts relating to the funding budget.

Mr. Fritz explained that the draft Request for Proposals (RFP) segments the United States portion of the Red River basin into five collection areas primarily because the area is too large to do in one collection season, and that a strategy has been developed on the segments to address the issue of uncertain funding. The RFP asks contractors to provide costs for each of the five collection areas and the completed collection area. The intent is to reasonably ensure that a collection area can be wholly completed based upon the available funding before proceeding to the next collection area.

Although the State Water Commission members expressed support for the proposal, there were concerns relating to the benefits in some of the project areas, as well as the funding uncertainties.

Testimony provided during the North Dakota legislative hearings and meetings, indicated a significant benefit of the project would be the collection of basin-wide, seamless high resolution elevation data that would be made widely available. Secretary Frink explained that because of the uncertainty of funding at this time for the entire project, some segments of the basin may not be collected. This could impact the results required for a basin-wide, seamless product.

It was the recommendation of Secretary Frink that the State Water Commission approve an allocation not to exceed \$400,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), to the International Water Institute to support the Red River basin mapping initiative. The Commission's affirmative action would be contingent upon the availability of funds, and that the financial commitments from the project sponsors are secured as outlined in the project budget.

It was moved by Commissioner Thompson and seconded by Commissioner Foley that the State Water Commission approve an allocation not to exceed \$400,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), to the International Water Institute to support the Red River basin mapping initiative. This action is contingent upon the availability of funds, and that the financial commitments from the project sponsors as outlined in the project budget are secured.

Commissioners Berg, Foley, Hanson, Jeff Weispfenning representing Commissioner Johnson, Hillesland, Olin, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. Commissioner Swenson voted nay. Recorded votes were 8 ayes; 1 nay. Lt. Governor Dalrymple announced the motion carried.

**APPROVAL OF REQUEST FROM
NORTH DAKOTA NONPOINT SOURCE
POLLUTION TASK FORCE FOR
SECTION 319 FUNDING (\$200,000)
(SWC Project No. 1859)**

A request from the North Dakota Non-point Source Pollution Task Force was presented for the State Water Commission's consideration for state cost participation in the amount of \$200,000 for the 2007-2009 biennium for projects

authorized under Section 319 of the federal Water Pollution Act.

One of the greatest challenges for current water quality management in North Dakota is meeting the new Environmental Protection Agency's (EPA) regulations limiting runoff from concentrated animal feeding operations (CAFO). Failure to meet these regulations not only affects water quality, but also incurs the risk of large fines and even the possible loss of economic viability for some livestock operations. A large portion of the state-apportioned EPA Section 319 funding has, in recent years, been allocated for engineering assistance and cost share to help livestock producers comply with federal regulations. The updating of the state's CAFO and animal waste facilities is a major undertaking, which will be ongoing for several years.

The most critical need at the present time is for engineering assistance. The demand for design assistance is too high to be met by currently available programs funded by Section 319 and other sources.

Although the State Health Department received legislative authority for the 2007-2009 biennium, the authority did not include an appropriation. Dennis Fewless, Director, North Dakota Department of Health Division of Water Quality, appeared before the State Water Commission to explain the program criteria, and to request the Commission's favorable consideration to provide \$200,000 in the 2007-2009 biennium to support the local sponsorships increase their availability of time and affordable engineering assistance and achieve their water quality goals.

Secretary Frink explained that the State Water Commission does have the legal authority to fund the program under North Dakota Century Code section 61-02-14, powers and duties of the Commission. He also explained the correlation between the Commission and the Department in developing the water quality standards as they relate to minimum flows in the rivers and streams in the state, as well as cooperation of the two agencies in other water-related projects.

It was the recommendation of Secretary Frink that the State Water Commission provide an allocation not to exceed \$200,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), to the North Dakota Nonpoint Source Pollution Management Program of the North Dakota Department of Health for a state match in the Section 319 program. Secretary Frink stated that the funds allocated for this use will provide a maximum benefit for the improvement of water quality, and also for ensuring the economic viability of many North Dakota animal feeding operations, while complying with federal regulations.

It was moved by Commissioner Berg and seconded by Commissioner Foley that the State Water Commission approve an allocation not to exceed \$200,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), to the North Dakota Nonpoint Source Pollution Management program of the North Dakota Department of Health for a state match in the Section 319 program. This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Hanson, Jeff Weispfenning representing Commissioner Johnson, Hillesland, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**RED RIVER BASIN FLOOD CONTROL
COORDINATOR - APPROVAL OF STATE
COST PARTICIPATION (\$36,000) FROM
JULY 1, 2007 THROUGH JUNE 30, 2009
(SWC Project No. 1705)**

A request was presented for the State Water Commission's consideration for state cost participation for the Red River Basin Flood Control Coordinator. The position was filled in January, 2003 through the hiring of a private contractor

by the Red River Joint Water Resource Board and the expenses are being shared by the Board, the State Water Commission, and the Garrison Diversion Conservancy District. The Red River Basin flood control coordinator is presently held by Senator Thomas Fischer.

The Red River basin is subject to severe and repeated flooding, which has a dramatic impact on the lives, health, property, and well-being of its citizens. Success in developing and implementing a comprehensive work plan to reduce these impacts requires that the various political subdivisions in the Red River basin and other interested groups understand the various options and its impacts, and are able to work together on common strategies to reduce flooding. The coordinator is implementing an informational program associated with these efforts.

The annual salary of the Red River Basin Flood Control Coordinator is \$50,000 plus expenses of up to \$10,000, with the State Water Commission and the Garrison Diversion Conservancy District each providing 30 percent of the cost of up to \$18,000 (\$15,000 of salary and \$3,000 of expenses) annually. The Red River Joint Water Resource District request before the State Water Commission is for state cost participation of \$36,000 (\$30,000 of salary and \$6,000 of expenses) from July 1, 2007 through June 30, 2009 for the Red River Basin Flood Control Coordinator.

It was the recommendation of Secretary Frink that the State Water Commission approve a 30 percent state cost participation not to exceed an allocation of \$36,000 from July 1, 2007 through June 30, 2009, from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020) for the Red River Basin Flood Control Coordinator.

It was moved by Commissioner Hillesland and seconded by Commissioner Berg that the State Water Commission approve a 30 percent state cost participation not to exceed an allocation of \$36,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), for the Red River Basin Flood Control Coordinator from July 1, 2007 through June 30, 2009. This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Hanson, Jeff Weispfenning representing Commissioner Johnson, Hillesland, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye.

There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

CONTROL OF NOXIOUS WEEDS ON SOVEREIGN LANDS ALONG THE YELLOWSTONE RIVER IN MCKENZIE COUNTY - APPROVAL OF STATE COST PARTICIPATION (\$33,732) (SWC Project No. 1289)

A request from the McKenzie County Weed Control Board was presented for the State Water Commission's consideration for state cost participation in the Board's control of noxious weeds, primarily salt cedar, leafy spurge, and knapweeds found on sovereign land along the Yellowstone River in

McKenzie county. The State Engineer is responsible for the management of sovereign land in North Dakota.

The board has surveyed approximately 32.28 miles of sovereign land along the Yellowstone River from the state line to the U.S. Highway 85 crossing. The noxious weeds have been treated with herbicides and their location recorded using GPS units. Using the survey information, the board will continue to inspect the area and re-treat if required. The total estimated annual cost of the project is \$16,866, all of which is determined eligible for state cost participation based on the actual eligible costs.

The State Water Commission members expressed the importance of noxious weed control on sovereign land and directed Secretary Frink and the Commission staff to survey the sovereign land statewide in an effort to expand its management of noxious weed control.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation at 100 percent of the actual eligible costs, not to exceed an allocation of \$33,732 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), for the control of noxious weeds on sovereign land along the Yellowstone River in McKenzie county from July 1, 2007 through June 30, 2009.

It was moved by Commissioner Hanson and seconded by Commissioner Berg that the State Water Commission approve state cost participation at 100 percent of the actual eligible costs, not to exceed an allocation of \$33,732 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), for the control of noxious weeds on sovereign land along the Yellowstone River in McKenzie county from July 1, 2007 through June 30, 2009. This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Hanson, Jeff Weispenning representing Commissioner Johnson, Hillesland, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

***SHEYENNE RIVER SNAGGING
AND CLEARING PROJECT -
APPROVAL OF STATE COST
PARTICIPATION (\$65,000)
(SWC Project No. 568)***

A request from the Southeast Cass Water Resource District was presented for the State Water Commission's consideration for state cost participation in a snagging and clearing project on the Sheyenne River, which requires

regular snagging and clearing to maintain the channel capacity during floods. The project will begin at 12th Avenue North (Highway 10) in West Fargo and proceed north to the terminus of the Sheyenne River (at the Red River) in Section 13 of Harwood township.

The snagging and clearing work includes the removal of fallen trees, standing trees in eminent danger of falling into the channel, driftwood, snags, loose stumps and trunks, standing stumps or objectionable material which is encountered within the river channel between the upstream and downstream limits.

The project engineer's cost estimate is \$260,000, all of which is determined to be eligible for state cost participation at 25 percent of the eligible costs (\$65,000). The request before the State Water Commission is for a 25 percent state cost participation in the amount of \$65,000.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation in the Sheyenne River snagging and clearing project at 25 percent of the eligible costs, not to exceed an allocation of \$65,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020).

It was moved by Commissioner Berg and seconded by Commissioner Thompson that the State Water Commission approve state cost participation in the Sheyenne River snagging and clearing project at 25 percent of the eligible costs, not to exceed an allocation of \$65,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020). This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Hanson, Jeff Weispenning representing Commissioner Johnson, Hillesland, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**WILD RICE RIVER SNAGGING
CLEARING PROJECT -
APPROVAL OF STATE COST
PARTICIPATION (\$47,500)
(SWC Project No. 568)**

A request from the Southeast Cass Water Resource District was presented for the State Water Commission's consideration for state cost participation for their project to snag and clear approximately 10 statute miles of the

Wild Rice River. The project will begin at the river's outlet into the Red River in Section 19, Tier 138 North, Range 48 West and proceed south to the N.D. State Highway 46 (Cass-Richland) county line.

The snagging and clearing work includes the removal and disposal of all fallen and standing trees in eminent danger of falling into the channel, and any objectionable material which is encountered within the primary channel between the upstream and downstream limits.

The project engineer's cost estimate is \$190,000, all of which is determined to be eligible for state cost participation at 25 percent of the eligible costs (\$47,500). The request before the State Water Commission is for a 25 percent state cost participation in the amount of \$47,500.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation in the Wild Rice River snagging and clearing project at 25 percent of the eligible costs, not to exceed an allocation of \$47,500 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020).

It was moved by Commissioner Thompson and seconded by Commissioner Hillesland that the State Water Commission approve state cost participation in the Wild Rice River snagging and clearing project at 25 percent of the eligible costs, not to exceed an allocation of \$47,500 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020). This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Hanson, Jeff Weispfenning representing Commissioner Johnson, Hillesland, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**CASS COUNTY DRAIN NO. 27
IMPROVEMENT RECONSTRUCTION -
APPROVAL OF STATE COST
PARTICIPATION (\$94,197)
(SWC Project No. 1080)**

A request from the Southeast Cass Water Resource District was presented for the State Water Commission's consideration for state cost participation in the District's project to reconstruct portions of Cass County Drain No. 27.

The area of the drain to be reconstructed consists of flattening the channel banks and widening the channel to allow for drainage improvements in the upper portion of the watershed.

The proposed project involves the improvement of approximately 1 mile of the drain between 52nd Avenue southeast and 64th Avenue southeast in Fargo. As a result of 2006 spring flooding, Sections 4 and 5 of Stanley Township (Tier 138 North, Range 49 West) sustained intermittent bank failures and will be reconstructed with improvements rather than repaired. FEMA repair funding is anticipated and will be applied toward the improved project. A sediment analysis determined that no sediment will be removed during the reconstruction as this area of the drain was cleaned in the fall of 2006.

The downstream reaches in Sections 27, 28 and 33, Tier 139 North, Range 49 West were reconstructed between 2000 and 2007. It was recognized during that time that the drain, originally a flood control drain, had begun providing an urban benefit as well, and that the increased size of the cross sections for Section 27, Tier 139, Range 49 were viewed as providing storage capacity for the urban runoff in the area. Because the State Water Commission's rural flood control cost share policy does not provide state cost participation for projects involving urban storm water management, the State Water Commission passed a motion on September 11, 2000 to approve 10 percent of the eligible costs not to exceed an allocation of \$26,260. This approach was based on the fact that the proposed cross section had the capacity to carry in excess of a 100-year event while rural drains are typically designed for 10-year frequencies or less.

On March 11, 2004, the State Water Commission considered a cost participation request to reconstruct a reach of Cass County Drain No. 27 located in Sections 28 and 33, Tier 139 North, Range 49 West. The Commission determined the watershed contributing to the drain was predominately rural in nature and approved cost participation as a rural flood control project at 35 percent of the eligible costs not to exceed an allocation of \$75,150.

The project engineer's cost estimate for the 2007-2009 project is \$735,000, of which \$294,365 is determined eligible for state cost participation as a rural flood control project at 32 percent of the eligible costs (\$94,197). It was determined that the watershed contributing to Cass County Drain No. 27 at this time is approximately 90 percent rural and 10 percent urban, therefore, the cost participation for the reach of Cass County Drain No. 27 being considered at this

time was adjusted to 32 percent. The request before the State Water Commission is for a 32 percent state cost participation in the amount of \$94,197.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation as a rural flood control project at 32 percent of the eligible costs, not to exceed an allocation of \$94,197 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), for the Cass County Drain No. 27 improvement reconstruction project.

It was moved by Commissioner Hanson and seconded by Commissioner Olin that the State Water Commission approve state cost participation as a rural flood control project at 32 percent of the eligible costs, not to exceed an allocation of \$94,197 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), for the Cass County Drain No. 27 improvement reconstruction project. This action is contingent upon the availability of funds.

The cost share policy criteria for rural flood control drainage projects was discussed. Commissioner Swenson questioned the rural flood control policy and the criteria used in differentiating between rural flood control and urban storm water management projects, which could have an effect on the state cost participation percentage and funding allocation for these types of projects. Commissioner Swenson indicated until the policy criteria on these issues has been further reviewed he could not support state cost participation as recommended.

A substitute amendment to the original motion was offered by Commissioner Swenson and seconded by Commissioner Berg that the State Water Commission direct the Secretary to the State Water Commission and the Commission staff review the rural flood control policy criteria relating to rural/urban projects and, if appropriate, adjust the percentage and allocation of cost share participation as it relates to Cass County Drain No. 27.

Following considerable discussion relating to the motion and substitute amendment to the original motion, Commissioners Swenson and Berg withdrew their substitute amendment.

Commissioners Berg, Foley, Hanson, Jeff Weispfenning representing Commissioner Johnson, Hillesland, Olin, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. Commissioner Swenson voted nay. Recorded votes were 8 ayes; 1 nay. Lt. Governor Dalrymple announced the motion carried.

Lt. Governor Dalrymple further directed the rural flood control committee to revisit the rural flood control drainage projects policy as it relates to the rural/urban issues. Secretary Frink stated that a meeting of the rural flood control committee is scheduled for December 5, 2007.

**CASS COUNTY DRAIN NO. 62
CONSTRUCTION PROJECT -
CONDITIONAL APPROVAL OF STATE
COST PARTICIPATION (\$125,550)
(SWC Project No. 1947)**

A request from the Maple River Water Resource District was presented for the State Water Commission's consideration for state cost participation in the District's project to construct Cass County Drain No. 62. The project consists of

constructing a drain in Sections 32, 33, and 34, Tier 140 North, Range 52 West, which will connect the existing Swan Creek diversion channel Drain No. 62 project to the east and the existing Swan Creek tributary drain project to the northwest. The entire system and assessment district will be referred to as Cass County Drain No. 62. The lower grade line is intended to improve agricultural lands and accommodate storm water drainage from the ethanol plant in Section 33.

The project construction work consists of widening, flattening, and deepening the existing township ditch in Sections 32, 33, and 34 in Casselton Township, creating a legal assessment drain corridor extending from Section 32 through to Section 35 outletting into the Swan Creek diversion channel, which is currently being constructed from a 25-year to a 100-year design.

The proposed drain to be constructed will be approximately 1.5 miles in length, 10-foot bottom width, 4:1 side slopes, and a maximum depth of 7 feet. A cable concrete drop structure will be installed at the Tharaldson ethanol plant location to accommodate their storm water drainage. A drop structure will be constructed at the west end of the project where it connects with the existing drain on the northwest, 2 new pipe arches will be installed at the location where the proposed drain ties into the diversion channel on the east end. Additional culverts will be installed at crossings and for the ethanol plant. Utilities will be relocated and rights-of-way will be acquired. Other project work consists of backfill, spoil leveling, riprap, seeding, storm water management, and material test. To include the existing projects at both ends, the total length of Cass County Drain No. 62 will be approximately 3.5 miles in length.

Using the watershed area, approximately 12 percent of the runoff contributing to Cass County Drain No. 62 is from the ethanol plant (storm water drainage) and approximately 88 percent of the runoff contribution is from sheetwater/agricultural sources. The 35 percent state cost participation for rural flood control projects was adjusted to 31 percent to reflect only the corresponding eligible improvement for agricultural lands. Although the ethanol plant will be funding 100 percent of the local share of the construction cost of this project, the

assessment district for maintenance will consist of a 70 percent assessment to the developed commercial properties and a 30 percent assessment to the agricultural landowners.

The project engineer's cost estimate is \$211,210, of which \$70,720 is determined eligible for state cost participation as a rural flood control project at 31 percent of the eligible costs (\$125,550). Pursuant to the State Water Commission's cost share policy, conditional approval of a rural flood control drainage project is allowed subject to satisfaction of the required drain permit, which is being processed. A sediment analysis is not required as this is new construction. The request before the State Water Commission is for a 31 percent state cost participation in the amount of \$125,550.

It was the recommendation of Secretary Frink that the State Water Commission approve conditional state cost participation as a rural flood control project at 31 percent of the eligible costs, not to exceed an allocation of \$125,550 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), for the Cass County Drain No. 62 construction project.

It was moved by Commissioner Olin and seconded by Commissioner Thompson that the State Water Commission conditionally approve state cost participation as a rural flood control project at 31 percent of the eligible costs, not to exceed an allocation of \$125,550 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), for the Cass County Drain No. 62 construction project. This action is contingent upon the availability of funds, and satisfaction of the required drain permit.

Commissioners Berg, Foley, Hanson, Jeff Weispenning representing Commissioner Johnson, Hillesland, Olin, Swenson, and Thompson voted aye. There were no nay votes. An abstention of vote was recorded for Lt. Governor Dalrymple. Lt. Governor Dalrymple announced the motion carried.

**ORDINARY HIGH WATER
MARK DELINEATIONS -
APPROVAL OF STATE COST
PARTICIPATION (\$100,000)
(SWC Project No. 1625)**

Chapter 61-33 of the North Dakota Century Code defines sovereign land as "those areas, including beds and islands, lying within the ordinary high water mark of navigable lakes and streams." North Dakota Administrative

Code defines the ordinary high water mark as "that line below which the action of the water is frequent enough either to prevent the growth of vegetation or to restrict its growth to predominantly wetland species. Islands in navigable streams and waters are

considered to be below the ordinary high water mark in their entirety." The ordinary high water mark delineations are required in order to accurately determine the sovereign lands, which are the responsibility of the State Engineer to manage, operate, and supervise.

To accurately define the State of North Dakota's sovereign land and to insure those lands are preserved for the good of the public, the Office of the State Engineer has initiated the process of delineating the ordinary high water mark in areas of concern statewide.

It was the recommendation of Secretary Frink that the State Water Commission approve an allocation not to exceed \$100,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), to delineate the ordinary high water mark in areas of immediate concern to allow the State Engineer to accurately determine the sovereign lands as required in chapter 61-33 of the North Dakota Century Code.

It was moved by Commissioner Foley and seconded by Commissioner Berg that the State Water Commission approve an allocation not to exceed \$100,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), to delineate the ordinary high water mark in areas of immediate concern to allow the State Engineer to accurately determine the sovereign lands as required in chapter 61-33 of the North Dakota Century Code. This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Hanson, Jeff Weispenning representing Commissioner Johnson, Hillesland, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
CONTRACT AND STATUS REPORT
(SWC Project No. 1736)**

Tim Freije, project manager for the Southwest Pipeline Project, provided the following project status report:

Medora-Beach Regional Service Area, Phase II:

Contract 7-8B - Beach, Golva, and Fryburg Service Areas. The contractor, Abbot, Arne, Schwindt, Inc., completed installation of all pipeline and services on contract 7-8B. Two hundred fifty-nine (259) users were turned over to the Southwest Water Authority as ready for service. The city of Golva began taking water on November 20, 2006. The final inspection of contract 7-8B was carried out on September 27, 2007.

Contract 7-8C - Junction Inn Service Area and the Tower Hill and Crown Butte VFD Pocket Areas (Morton County Areas). The contractor, Northern Improvement Company, completed installation of 172 miles of pipeline on contract 7-8C. One hundred fifty-three (153) users have been turned over to the Southwest Water Authority as ready for service. All contract 7-8C areas have been seeded. The final inspection of contract 7-8C took place on October 22, 2007.

Medora-Beach Regional Service Area, Phase III:

Contract 7-8D - South Fryburg Pocket. Bids were opened for contract 7-8D on April 12, 2007. USDA Rural Development funding was approved for the contract. On May 9, 2007, the State Water Commission authorized the award of contract 7-8D to Abbot, Arne, Schwindt, Inc., Moorhead, MN, in the amount of \$1,535,515.90. The contract consists of approximately 97 miles of pipeline, 81 users, and one booster pump station. Twenty-one (21) users who do not require the booster pump station for service have been turned over to the Southwest Water Authority as ready for service. Sixty-three (63) services have been installed and all pipeline installed by plow or trencher have been installed. The booster pump station needed to serve the remaining customers is scheduled to be delivered in November, 2007. A temporary pump is being used to fill, pig, and test the lines in the interim to facilitate meeting the December 15, 2007 substantial completion date.

Contract 7-8E - Fairfield Service Area; and Contract 7-8F, Grassy Butte Service Area and Trotters Pocket. The bid opening for contract 7-8E, originally scheduled for June 27, 2007, was postponed to allow time to incorporate the Grassy Butte pocket area in McKenzie county into contract 7-8E. The bid date has not been scheduled as an application is on file with USDA Rural Development for \$5.5 million in funding assistance on contract 7-8E.

The Grassy Butte service area is in McKenzie county north of the Fairfield service area and is outside of the Southwest Pipeline Project area. McKenzie county had considered using municipal, rural and industrial (MR&I) funds to build a distribution system in the area and purchase project water. Due to the economies of scale in both construction contracts, and operations and maintenance, the decision was made to incorporate the Grassy Butte service area into the Southwest Pipeline Project to better and more efficiently utilize public funds. The MR&I funds allocated to McKenzie county will be used on this contract.

Richardton and Dodge Pump Stations Standby Engine Generators:

On April 12, 2007, the State Water Commission authorized the award of contract 4-2A/4-1C to Cummins N Power, LLC, Fargo, ND, in the amount of \$919,800. The contract includes one 1000kw standby generator for the Dodge pump station and one 1500kw standby generator for the Richardton pump station. The gener-

ators will start and run one large pump at each pump station to provide a flow of 6150 gpm, or 68.7 percent, of the design flow rate. A pre-construction conference was held on October 10, 2007, and construction of the concrete base pads began the week of October 15, 2007. The contract appears to be on schedule for the delivery date of November 15, 2007, and the completion date is required to be 45 calendar days later, or December 30, 2007.

Oliver-Mercer-North Dunn Regional Service Area:

Contract 7-9A - Beulah Interim Service Area. The contractor, Abbot, Arne, Schwindt, Inc., Moorhead, MN, completed installation of all pipeline and services on contract 7-9A. All users were turned over to the Southwest Water Authority as ready for service the week of November 13, 2006. The city of Zap began taking water on November 15, 2006. The Beulah interim service area was seeded, and the final inspection of contract 7-9A took place on September 27, 2007.

Public meetings were held with the city commissions of Beulah, Hazen, Center, Stanton, and Pick City in the spring and summer, 2007, to increase the awareness of and interest for the Southwest Pipeline Project. Elections were held in Center and Stanton and both cities elected to sign up for service from the Southwest Pipeline Project. The city council of Hazen utilized its home rule charter to enter into a contract for project water service and save the cost of a public election. The citizens of Hazen were given the opportunity to discuss the matter with the city council and the vast majority of comments were positive. A motion before the Beulah city council to sign up for project water failed for a lack of a second.

System Capacity/Subsequent Users:

Project officers have been approached by various entities interested in obtaining significant amounts of water from the Southwest Pipeline Project, primarily industrial users. Three hundred (300) gallons per minute remains unallocated which could be used to serve one of these industrial users.

A casino/resort is being constructed on Beaver Bay north of Zap. Ground water in the area is insufficient for their needs. The proposal is for the casino to come onto the system as a subsequent raw water user and treat the water themselves until such a time as potable water is available from the pipeline. As a subsequent user, the casino would be responsible for all construction costs in order to tie into the project's existing utilities, which would be at the Zap raw water reservoirs.

Due to planned expansion of the project, potable water will be available from the area at some point. An agreement is currently being drafted by which the casino will install a line from the Zap raw water reservoir to its location. This line will be built to project specifications and sized to supply approximately 10-12 rural water users in the area when the potable water is available.

**SOUTHWEST PIPELINE PROJECT -
DEFERRED CONSTRUCTION ITEMS
(SWC Project No. 1736)**

During construction of the Southwest Pipeline Project, there were facilities in the original plans that were not built at the time of construction due to a lack of funding or necessity. Tim Freije presented a listing of deferred construction items, dated October 11, 2007 and attached hereto as **APPENDIX "C"**. As the system matures, Mr. Freije explained that some of the features may be essential to serve additional customers signing on as subsequent users. Mr. Freije also explained that operational and maintenance enhancement items would be the responsibility of the Southwest Water Authority.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL FOR STATE FUNDING
(\$10.3 MILLION) IN 2007-2009
BIENNIUM (S.B. 2020)
(SWC Project No. 1736)**

Senate Bill 2020, the State Water Commission's appropriation bill for the 2007-2009 biennium, includes funding of \$10,300,000 for the Southwest Pipeline Project. This amount includes \$1,000,000 which was allocated in the 2005-2007 biennium to fund contract 4-1C/4-2A for the backup generators for the Richardton and Dodge pump stations. Tim Freije discussed the allocation proposed expenditures.

It was the recommendation of Secretary Frink that the State Water Commission approve an allocation not to exceed \$10,300,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), for the Southwest Pipeline Project.

It was moved by Commissioner Olin and seconded by Commissioner Hanson that the State Water Commission approve an allocation not to exceed \$10,300,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), for the Southwest Pipeline Project. This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Hanson, Jeff Weispfenning representing Commissioner Johnson, Hillesland, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**NORTHWEST AREA WATER
SUPPLY (NAWS) PROJECT -
PROJECT STATUS REPORT
(SWC Project No. 237-04)**

Michelle Klose, project manager for the Northwest Area Water Supply (NAWS) project, provided the following project status report:

Environmental Impact Statement: The Bureau of Reclamation published a notice of intent in the Federal Register on March 6, 2006 to initiate scoping for an environmental impact statement (EIS) on the NAWS project to address biota concerns. The initial public scoping was completed in May, 2006. The Bureau completed a review of the draft EIS with the cooperating agencies on July 25, 2006. The Commission staff provided technical information for the EIS as requested by the Bureau.

The Bureau of Reclamation expects to release the draft EIS to the public this winter. The final EIS and Record of Decision are expected by October, 2008.

Pilot Plant Study: The pilot plant water quality sampling at the Snake Creek pumping plant was completed, and the final results were provided to the Bureau of Reclamation.

Manitoba Lawsuit: At the request of Judge Rosemary Collyer, a joint federal and state project status report was presented in June, 2007. The next expected court activity would be the state's request later this fall to modify the injunction to allow for additional projects.

Design Work Update: The State Water Commission intends to bid NAWS contract 4-2A in the fall of 2007. This contract includes the Minot high service pump station and a 2 million gallon reservoir. Estimates of cost for the facility are \$13 million.

Construction Contracts Update:

Contract 2-1D: This contract covers 15 miles of 36-inch pipe between the city of Max and Lake Sakakawea. The contractor is completing work relating to the vaults and pressure testing. The contract cost is \$9,661,735.95, with remaining payments totalling \$559,076. Concerns with the high failure rate on the welded tangentials on the pipe in the vaults are being addressed with the contractor.

Contract 2-2A: The State Water Commission authorized the award of Contract 2-2A to ERS Constructors, Centennial, CO, on April 19, 2007. Contract 2-2A covers 10 bores, approximately 4 miles of 36" - 24" pipe, and associated facilities within the city of Minot, which includes pipeline from the high service pump station west to the U.S. Highway 83 bypass, south to U.S. Highway 52, and to North Hill. Construction activities commenced the week of June 4, 2007.

Contract 2-2A cost is \$6,048,642, with the remaining payments totaling \$3,330,537. Six (6) of the 10 bores and 1 river bore have been completed. The remaining bores includes 1 river bore, the 4th Avenue bore in Minot, and the Max railroad bore. The remaining pipe laying work is from the U.S. Highway 83 bypass near the gravel pit heading to North Hill.

Contract 2-2B: This contract includes approximately 20 miles of 16" - 10" pipe and 3 booster pump stations between Minot at U.S. Highway 52 and the city of Berthold. The State Water Commission authorized the award of contract 2-2B on May 9, 2007 to Northern Improvement Co., Fargo, ND. Construction activities commenced the week of June 25, 2007. The contract cost is \$3,094,675, with the remaining payments totaling \$1,282,299. The majority of the pipe is in the ground, and the line between Des Lacs and Burlington has been pressure tested and has passed the bacTs. There are delays on the delivery of the booster pump station until mid-December, 2007.

Contract 5-2B: The State Water Commission authorized the award of contract 5-2B on July 17, 2007, in the amount of \$1,135,000. Acquisition issues relating to reservoir site property have been resolved, and the Notice to Proceed was issued the week of October 15, 2007. Contract 5-2B covers a 750,000 gallon reservoir and a 500,000 gallon storage reservoir along the contract 2-2B pipeline between Minot and Berthold.

Lt. Governor Dalrymple reported that Governor Hoeven recently met with leadership of the U.S. State Department, the Department of the Interior, and the Environmental Protection Agency in Washington, DC to discuss advancement of North Dakota water projects including the NAWS project and the Red River Valley Water Supply project, as well as efforts for developing an action plan for funding and implementing a water treatment option selected by the Bureau of Reclamation for the NAWS project.

Dennis Breitzman, Area Manager for the Bureau of Reclamation, Bismarck, ND, briefed the State Water Commission members on the Bureau's efforts relating to the environmental impact statements for the Red River Valley Water Supply Project and the Northwest Area Water Supply project. The final EIS for the Red River Valley Water Supply project is anticipated in late summer, 2007; and the draft EIS for the Northwest Area Water Supply project is expected to be released to the public in December, 2007. Mr. Breitzman addressed the Bureau's efforts relating to the Red River Valley Water Supply project including congressional authorization, cost allocation models, and the draft 2008 work plan and budget.

**NORTHWEST AREA WATER
SUPPLY (NAWS) PROJECT -
APPROVAL FOR STATE FUNDING
(\$5.0 MILLION) IN 2007-2009
BIENNIUM (S.B. 2020)
(SWC Project No. 237-04)**

Senate Bill 2020, the State Water Commission's appropriation bill for the 2007-2009 biennium, included funding of \$5,000,000 for the Northwest Area Water Supply (NAWS) project. Michelle Klose discussed the proposed federal, state, and local project funding for the 2007-2009 biennium.

It was the recommendation of Secretary Frink that the State Water Commission approve an allocation not to exceed \$5,000,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), for the Northwest Area Water Supply Project.

It was moved by Commissioner Foley and seconded by Commissioner Hanson that the State Water Commission approve an allocation not to exceed \$5,000,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), for the Northwest Area Water Supply Project. This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Hanson, Jeff Weispenning representing Commissioner Johnson, Hillesland, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**NORTHWEST AREA WATER
SUPPLY (NAWS) PROJECT -
APPROVAL OF EMERGENCY
CHANGE ORDER TO CONTRACT 2-2A
(SWC Project No. 237-04)**

The State Water Commission authorized the award of NAWS contract 2-2A to ERA Constructors, Centennial, CO, on April 19, 2007, in the amount of \$5,876,766. Contract 2-2A covers 10 bores, approximately 4 miles of 36" - 24"

pipe, and associated facilities within the city of Minot, which includes pipeline from the high service pump station west to the U.S. Highway 83 bypass, south to U.S. Highway 52, and to North Hill. Construction activities commenced the week of June 4, 2007.

Michelle Klose explained that pipeline modification at the high service pump station site is required this fall during the city of Minot's water treatment plant low water use period. This pipe work is required to provide water service through the NAWS contract 2-2A pipeline. If the work is not completed this fall, water service to Berthold and Minot's south hill service area will be delayed.

Ms. Klose also explained that the connection of this pipeline rerouting to the existing piping will interrupt the raw water supply to the treatment plant and the finished water supply leaving the treatment plant, therefore, the timing of this interruption of service is critical.

It was the recommendation of Secretary Frink that the State Water Commission approve an emergency change order to NAWS contract 2-2A for additional pipe work at the high service pump station site. The proposed change order in the amount of \$520,000 is within 10 percent of the original contract 2-2A bid price of \$5,876,766.

It was moved by Commissioner Foley and seconded by Commissioner Olin that the State Water Commission approve an emergency change order to NAWS contract 2-2A for additional pipe work at the high service pump station site.

Commissioners Berg, Foley, Hanson, Jeff Weispfenning representing Commissioner Johnson, Hillesland, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**DEVILS LAKE
HYDROLOGIC UPDATE
(SWC Project No. 416-01)**

Devils Lake is currently at an elevation of 1447.01 feet msl. Stump Lake is at a current elevation of 1447.06 feet msl.

The two lakes have equalized at this time although U.S. Geological Survey readings still show a slight difference in stage, which is dependent on wind conditions.

The combined volume of Devils Lake and Stump Lake is 2.926 million acre-feet with 139,071 surface acres. This is a reduction for the two lakes from early July, 2007 when the volume was 3.01 million acre-feet with 143,642 acre-feet. On October 10, 2006, Devils Lake was at 1447.20 feet msl and Stump Lake was at an elevation of 1444.05 feet msl. This is an increase volume from October, 2006 of 19,098 acre-feet and a decrease of 289 acres in surface area for the two lakes.

Since equalization has occurred, the U.S. Geological Survey has discontinued the flow gage between the two lakes. Flow may be in either direction depending upon levels of both lakes, the wind direction and velocity.

The predicted peaks at differing exceedance levels from the National Weather Service forecast for November 20, 2007 are shown below for Devils Lake and Stump Lake:

	<u>90%</u>	<u>50%</u>	<u>10%</u>
Devils Lake	1446.60	1446.70	1446.90
Stump Lake	1446.60	1446.66	1446.94

***NORTH DAKOTA DEVILS LAKE
OUTLET PROJECT REPORT
(SWC Project No. 416-07)***

The State of North Dakota pursued an emergency phased outlet project from West Bay to the Sheyenne River. The project was based on a three-year construction time line with construction commencing in the fall of 2002. Operation of the outlet began on August 15, 2005 within the guidelines of the North Dakota Pollutant Discharge Elimination System (NDPDES) water quality discharge permit issued by the North Dakota Department of Health.

The North Dakota Department of Health authorized modifications to the NDPDES water quality discharge permit that would allow a more effective operation of the outlet. The modifications would: 1) allow pumping beyond the original May 1 to November 1 constraint as long as ice-free conditions exist on the Sheyenne River; 2) remove the total suspended solids limit; and 3) adjust the current 300 mg/L instream sulfate level that would allow the outlet to be operated if the instream sulfate level is greater than 260 mg/L as long as the sulfate levels in the Sheyenne River were not increased more than 15 percent up to a maximum level of 450 mg/L.

On September 14, 2006, the People to Save the Sheyenne River, Inc., the Peterson Coulee Outlet Association, the Government of the Province of Manitoba, and the National Wildlife Federation filed an appeal to challenge the North Dakota Department of Health's modifications to the NDPDES water quality discharge permit. The Appellants arguments included: 1) that the North Dakota Department of Health failed to demonstrate adequate causes for the permit modifications, or there was new information available now that was not available at the time the permit was issued on August 22, 2003; and 2) that the North Dakota Department of Health failed to conduct an anti-degradation review. The judge dismissed the appeal by the Province of Manitoba and other groups. The modified water quality permit was appealed to the North Dakota Supreme Court. Oral arguments were heard on October 10, 2007.

Sulfate concentrations at Bremen on the Sheyenne River exceeded 450 mg/L from ice free time up until early June, 2007 when rainfall caused a reduction of the sulfate levels. Samples taken on June 5 had a sulfate level of 426 mg/L. Pumping at the Round Lake pumping plant was commenced on June 11, 2007. The sulfate levels in the outlet flow and in the Sheyenne River, as well as

discharge values in the Sheyenne River at Bremen, control the amount of flow which can be released from the terminal gate of the outlet. This is in compliance of the NDPDES water quality discharge permit as modified. Adequate flows in the Sheyenne River with lower sulfate levels occurred during June, July and August, 2007 which allowed a total release of 299 acre-feet of water from the outlet. Since August 19, 2007, Devils Lake water was not released as flows in the Sheyenne River were negligible and the sulfate concentrations were above 450 mg/L.

Joe Belford, Devils Lake Downstream Acceptance program manager, provided an update on the efforts of the Devils Lake interagency task force.

**GARRISON DIVERSION
CONSERVANCY DISTRICT
REPORT
(SWC Project No. 237)**

The Dakota Water Resources Act of 2000 authorized the Secretary of the Interior to conduct a comprehensive study of the water quantity and quality needs of the Red River valley in North

Dakota and possible options for meeting those needs. The Act identified two project-related studies which need to be completed: the *Report on Red River Valley Water Needs and Options*, and the *Red River Valley Water Supply Project Environmental Impact Statement (EIS)*. The Bureau of Reclamation has completed the *Report on Red River Valley Water Needs and Options*. The State of North Dakota and the Bureau are jointly preparing the EIS. Governor Hoeven designated the Garrison Diversion Conservancy District to represent the state in this endeavor.

The draft EIS was released in December, 2005, and public hearings were held in February and March, 2006. All of the studies are completed, and the scheduled completion for the final EIS is late summer, 2007.

A supplemental draft EIS was completed with the comment period ending on April 25, 2007. Additional study efforts included biota plant failure analysis by the United States Geological Survey (USGS), water quality monitoring by the USGS, impact analysis of Missouri River depletions under drought conditions by the Corps of Engineers, and a cumulative impact analysis of ground-water depletions in Minnesota by the USGS. The comments were evaluated to determine if additional study was required. The Corps of Engineers was asked to remodel the impacts to the Missouri River resources using their latest model which includes sedimentation buildup in the reservoirs.

The status reports provided by the Garrison Diversion Conservancy District relating to the specific efforts of the Red River Valley Water Supply project and studies are attached hereto as **APPENDIX "D"**.

Pat Zavoral, Fargo City Administrator, provided a briefing on the proposed 218-mile Canada-owned oil pipeline that would run through eastern North Dakota. TransCanada Keystone Pipeline is proposing a route that is close to and parallel with the Sheyenne River in Barnes, Griggs and Ransom counties and crosses 23 streams and coulees that flow into the Sheyenne River. The city of Fargo has expressed concern about the possible contamination of its water supply in Lake Ashtabula, and landowners along the route are concerned about potential oil spills that could affect surface waters and aquifers.

**MISSOURI RIVER REPORT
(SWC Project No. 1392)**

On October 8, 2007, the system storage in the six mainstem reservoirs was 37.3 million acre-feet (MAF), 18.8 MAF below the average system storage for the end of September and 2.5 MAF more than in 2006. The record minimum system storage for the end of September was 35.0 MAF in 2006. On October 8, 2007, Lake Sakakawea was at an elevation of 1813.7 feet msl, 4.1 feet higher than in 2006 and 23.5 feet msl below its average September elevation. Lake Sakakawea is at or near its peak for the year. The record minimum end of September elevation was 1809.5 feet msl in 2006.

The Corps of Engineers predicted runoff above Sioux City for 2007 to be 20.8 MAF, 82 percent of normal. This resulted in a forecast that the system will have 36.6 MAF at the end of 2007, the previous minimum end of year system storage was 34.4 MAF in 2006. Lake Sakakawea is forecasted to fall to 1811.1 feet msl at the end of 2007.

The elevation of Lake Oahe was 1580.8 feet msl on October 8, 2007, which is 9.1 feet higher than a year ago and 19.7 feet lower than its average September elevation. The Corps of Engineers is estimating that Lake Oahe will fall to 1581.6 feet msl by the end of 2007.

Fort Peck Lake was at an elevation of 2200.0 feet msl on October 8, 2007, which is 2.1 feet lower than a year ago and 31.7 feet below its average end of September elevation. The forecast calls for Fort Peck Lake to fall to 2199.2 feet msl by the end of 2007.

The Master Manual revision and the Biological Opinion of that revision calls for the establishment of a Missouri River Recovery Implementation Committee (MRRIC). The committee will provide recommendations and guidance to the Secretary of the Army, governmental entities and the tribes regarding mitigation, recovery, and restoration of threatened and endangered species, and to prevent further declines of other native species. A committee consisting of stakeholders from throughout the Missouri River basin has developed a proposed charter with public workshops and comments accepted until November 21, 2007.

**NEXT STATE WATER
COMMISSION MEETING**

The next meeting of the State Water Commission is scheduled for December 7, 2007 at the Best Western Ramkota Hotel, Bismarck, ND.

There being no further business to come before the State Water Commission, Lt. Governor Dalrymple adjourned the meeting at 4:45 PM.



Jack Dalrymple, Lt. Governor
Representing John Hoeven, Governor
Chairman, State Water Commission

Dale L. Frink
North Dakota State Engineer, and
Chief Engineer-Secretary to the
State Water Commission

